

[REDACTED]

vs

[REDACTED]

COMPLAINT

1. On the 1st April 2023, [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), stating that [REDACTED] and [REDACTED] (the “**controller**”) installed a CCTV camera on the property situated at [REDACTED] which is allegedly processing his personal data without a lawful basis.

INVESTIGATION

2. Pursuant to the investigative powers of the Commissioner as set forth in article 58(1) of the Regulation and this Office’s internal investigation procedure, on the 6th April 2023, the Commissioner requested the controller to put forward their submissions in order to defend themselves against the allegation raised by the complainant, and were also requested to provide a copy of the image grab taken from the footage of the CCTV camera.
3. By means of an email dated the 24th April 2023, the controller submitted a copy of the image grab taken from the CCTV camera, as well as a copy of a police report, and submitted the following arguments for the Commissioner to consider in the legal analysis of this case:

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

- i. that “*the CCTV camera has been installed for our property's protection and safety, following the 'household exemption' GDPR regulations*”;
- ii. that the “*CCTV camera captures the area of our personalized reserved parking (20444) situated right in front of our front door/garage*”;
- iii. that “[f]ollowing several vandalism attempts made to our vehicles (parked in this spot and its adjacent bays), during the past few months, I wanted to ensure the protection and safety of my family and belongings.”; and
- iv. that “[t]he plaintiff's father has been fined for one of the vandalisms made to our car”.

LEGAL ANALYSIS AND DECISION

4. In principle, the Commissioner recognises the need for the installation of a CCTV camera system by a private individual to ensure the security and safety of their private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such system is solely capturing the private property of the person responsible for the installation of the CCTV camera(s).
5. In this regard, it should be pointed out that article 1 and recital 10 of the Regulation aim to ensure a high level of protection of the rights and fundamental freedoms of natural persons, in particular article 8 of the Charter of Fundamental Rights of the European Union, which stipulates that each and every person has the right to the protection of their personal data.
6. Having analysed the complaint submitted by the complainant in terms of article 77(1) of the Regulation on the 1st April 2023, wherein he alleged that the CCTV camera installed on the property of the controller is recording the front entrance of his garage, and as a result, this is an infringement of his right to the protection of his personal data.
7. Having noted the submissions provided on the 24th April 2023 by the controller, in particular, that the “*CCTV camera captures the area of our personalised reserved parking [REDACTED] situated right in front of our front door/garage*”. From the image grab produced by the controller, the Commissioner could establish that the CCTV camera is capturing the pavement and the road. The monitored area is considered to be public space which could be freely accessed by anyone.

8. Having further considered the submissions of the controller, wherein he argued that the “*the CCTV camera has been installed for our property's protection and safety, following the 'household exemption' GDPR regulations*” [emphasis has been added]. For this reason, the Commissioner assessed article 2(2)(c) of the Regulation, which provides that the processing of personal data “*by a natural person in the course of a purely personal or household activity*” falls outside the material scope of the Regulation. The European Data Protection Board in its Guidelines 3/2019² states that “[t]his provision – the so-called household exemption – in the context of video surveillance **must be narrowly construed**” [emphasis has been added].
9. The Court of Justice of the European Union in the Rynes³ judgment held that video surveillance which “*covers, even partially, a public space and is accordingly directed outwards from the private setting of the personal processing the data in that manner, it cannot be regarded as an activity which is a purely 'personal or household' activity*” [emphasis has been added]. This reasoning was endorsed by the Information and Data Protection Appeals Tribunal in relation to the decision ‘*Raymond u Mary Ann konjuġi Cutajar vs Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data*’⁴, where a CCTV camera was installed on the facade of a private property in such a manner to capture public space.
10. Thus, this led the Commissioner to conclude that the processing activity undertaken by means of the CCTV camera, which is the subject of this complaint, is not exempt in terms of article 2(2)(c), and consequently, the processing activity falls within the material scope of the Regulation.
11. The principle of lawful processing, which is one of the principles of data protection, states that every processing data operation needs to have a legal basis for processing. Therefore, article 6(1) of the Regulation stipulates what could constitute as a legal basis while also considering the other principles for data processing as stipulated in article 5 of the Regulation.
12. The European Data Protection Board⁵ states that every legal basis that falls under article 6(1) of the Regulation can provide a basis for the processing of personal data by means of video recording. However, in practice the provision which is likely to apply is legitimate interest according to article 6(1)(f) of the Regulation, and in exceptional cases, the consent of data subjects.

² Guidelines 3/2019 on processing of personal data through video devices, version 2.0. adopted on the 29th January 2020, paragraph 12.

³ Case C-212/13, paragraph 33.

⁴ Appeal Number 4/2019, decided on the 27th October 2020.

⁵ Ibid. 2, paragraph 16.

13. Consequently, the Commissioner proceeded to consider article 6(1)(f) of the Regulation and to determine whether a legal assessment was conducted by the controller based on the criteria established in recital 47 of the Regulation. The case-law of the Court of Justice of the European Union⁶ holds that for article 6(1)(f) of the Regulation to apply, there should be *“three cumulative conditions so that the processing of personal data would be legal, meaning that firstly, the search for a legitimate interest from the controller or from other third party/parties that data will be communicated to them, secondly the need for processing personal data for reasons of the needed legitimate interest and thirdly, on condition that the rights and fundamental freedoms of the data subjects will not be hindered”*.
14. According to the accountability principle as established in article 5(2) of the Regulation, the controller should be able to demonstrate that the three (3) cumulative conditions apply and that the processing is truly needed for legitimate reasons pursued by the controller, except when such interests are overridden by the interests or fundamental rights and freedoms of the data subjects.
15. The Commissioner emphasises that surveillance by means of video can only be lawful in order to achieve the purpose of a legitimate interest pursued by the controller and this interest must be concrete and not fictitious or speculative. Despite this, if the data subject objects to the surveillance in accordance with article 21 of the Regulation, the controller should be able to continue processing the personal data only if there is a compelling legitimate interest.
16. That according to the European Data Protection Board Guidelines⁷, an interest could only be legitimate in cases where real and dangerous situations are present and this interest concerns real situations of difficulty, such as damages or past serious incidents. The Commissioner emphasises that the controller should bear the responsibility to concretely prove that there is indeed a compelling legitimate interest to process the personal data of all the individuals accessing the public space. During the course of the investigation, the Commissioner was solely presented with a copy of a police report in relation to an incident where liquid was thrown at the vehicle of the controller. The Commissioner does not consider this as sufficient to limit the right to the protection of personal data pertaining to the complainant and other data subjects.

⁶ Case C-13/16, Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde vs Rīgas satiksme, dated 4 May 2017, paragraph 28.

⁷ Ibid. 2 paragraph 20.

In the light of the foregoing and after having taken into account the fact that the CCTV camera has the function to pan, tilt and zoom and consequently gives the controller the ability to change the angle of capture remotely at any time, the Commissioner hereby decides that the processing activity undertaken by means of the CCTV camera is not in conformity with article 6(1) of the Regulation. In terms of article 58(2)(f) of the Regulation, the Commissioner is ordering the controller to cease the processing activity and remove the CCTV camera within twenty (20) days from the date of receipt of this legally-binding decision.

The controller is requested to inform the Commissioner of the corrective action taken immediately thereafter, supported by photographic evidence. The information about the action taken shall be submitted by means of an email on idpc.cctv@idpc.org.mt

In terms of article 83(6) of the Regulation, “[n]on compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to an administrative fine up to 20 000 000 EUR”.



Ian Deguara
Information and Data Protection Commissioner

Decided today, *At* the day of October, 2023



Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.

An appeal to the Tribunal shall be made in writing and addressed to “The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta.”